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9 Attorneys for Defendant
United States of America and Federal Defendants
10

11 IN THE UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

13 CALIFORNIA COALITION FOR WOMEN
PRISONERS; R.B.; A.H.R.; S.L.; J.L.; J.M.;
14 G.M.; A.S.; and L.T., individuals on behalf of
themselves and all others similarly situated,
15

CASE NO. 4:23-CV-04155-YGR

Plaintiffs

v.

17 UNITED STATES OF AMERICA FEDERAL
BUREAU OF PRISONS, a governmental entity;
18 BUREAU OF PRISONS DIRECTOR
COLETTE PETERS, in her official capacity;
19 FCI DUBLIN WARDEN THAHESHA JUSINO,
in her official capacity; OFFICER
20 BELLHOUSE, in his individual capacity;
OFFICER GACAD, in his individual capacity;
21 OFFICER JONES, in his individual capacity;
LIEUTENANT JONES, in her individual
22 capacity; OFFICER LEWIS, in his individual
capacity; OFFICER NUNLEY, in his individual
23 capacity, OFFICER POOL, in his individual
capacity, LIEUTENANT PUTNAM, in his
individual capacity; OFFICER SERRANO, in
24 his individual capacity; OFFICER SHIRLEY, in
his individual capacity; OFFICER SMITH, in his
individual capacity; and OFFICER VASQUEZ,
25 in her individual capacity,
26

**UNITED STATES' RESPONSE TO ORDER
TO SHOW CAUSE**

Defendants.

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28

1 The government respectfully submits its response to Doc. 155, the Order to Show Cause. The
2 undersigned regret the transfer of R.F. but, as set forth below, the United States did not construe the
3 order to prevent transfers post-hearing and did not wittingly defy the Court's order.

4 **I. RELEVANT BACKGROUND**

5 On Tuesday December 26, 2023, BOP agency counsel Rob France sent Plaintiffs' counsel an
6 email stating that two of Plaintiff's prospective witnesses were set to transfer on December 27, 2023,
7 "for [Residential Drug Abuse Program (RDAP)]-related purposes with the initials M.H. and K.C. Their
8 paperwork was processed well before this hearing was set and witness lists were released." (Exhibit A at
9 3.) He requested that Plaintiffs' counsel, "[p]lease reach out to [their] clients and ask whether they still
10 wish to be transferred as previously scheduled or whether they wish to be present for the hearing, in
11 which case they would have to be transferred at a later date if they still wanted to participate in RDAP."
12 (*Id.*) Finally, given time-pressure, he requested "an answer in writing from [Plaintiffs' counsel] by
13 COB" on December 26, 2023. (*Id.*) Plaintiffs' counsel responded on December 26, 2023, that M.H. did
14 not want to transfer and that they were waiting to hear back from K.C. (Exhibit A at 2.) The next
15 morning, on December 27, 2023, Plaintiffs' counsel wrote to state that K.C. called and relayed that "she
16 was told she will not be transferring to RDAP. She does want to transfer and would prefer to transfer
17 even if it means she is unable to testify. Please advise." (Exhibit A at 1.) Agency counsel responded,
18 "K.C. was not put on the bus to transfer to RDAP this morning. Since we did not hear from you at
19 close of business last night, we needed to make a decision." Further, "[s]ince we wanted to safeguard
20 against a scenario where transit might make her unavailable to testify remotely, it was determined it was
21 best for her to remain at the facility so as to not impact her ability to testify. She will be on the next
22 move to the RDAP facility in January, and this decision does not adversely affect her ability to timely
23 complete her programming and earn requisite credits." (*Id.*)

24 On Thursday December 28, 2023, Plaintiffs filed a document titled, "[a]dministrative motion []
25 for increased attorney visitation before the January 3 Evidentiary Hearing." (Doc. 79.) The motion
26 outlined Plaintiffs' requests for visitation so that Plaintiffs' counsel "and anticipated witnesses may have
27 the opportunity to meaningfully prepare for the multiday Preliminary Injunction Hearing scheduled to
28 begin on January 3, 2024." (Doc. 79 at 2.) Additionally, Plaintiffs outlined their concern that

1 “individuals and potential witnesses who have recently met with counsel since the Court set the
2 Evidentiary Hearing” have been visually searched following these meetings, had their cells searched and
3 alleged to have had legal papers confiscated, and “suddenly announced transfers to other facilities.”
4 (Doc. 79 at 2.) Accordingly, they requested an order from the Court requiring Dublin “to provide
5 Plaintiffs’ counsel adequate access to FCI Dublin, including its satellite prison camp, to meet privately
6 and confidentially with Plaintiffs and incarcerated witnesses in the days leading up to the evidentiary
7 hearing...” (Doc. 79 at 2.) Relevant to this issue, Plaintiffs also stated that “just hours after a legal visit
8 with Plaintiffs’ counsel, three individuals, including two identified to the Government as Plaintiffs’
9 witnesses, were suddenly told that they would be transferred, without warning and during the holidays.”
10 (Doc. 79 at 3.)

11 The United States filed a response, outlining concerns with Plaintiffs’ proposal for increased
12 legal visitation over a holiday weekend to prepare witnesses for the evidentiary hearing (doc. 82), and
13 this Court issued an Order at 1:55 pm PST on Saturday, December 30, 2023 (doc. 88). The Order
14 granted in part and denied in part Plaintiffs’ administrative motion for increased attorney visitation
15 before the January 3 Evidentiary Hearing (doc. 79). The Court outlined five orders relevant to attorney
16 visitation to prepare for the evidentiary hearing (doc. 88 at 2). The fourth order stated, “Defendants are
17 **Ordered Not to Transfer** any person on the witness lists filed in this action until further order of this
18 Court.” (Doc. 88 at 2, emphasis in original.) This order also contemplated a potential situation where the
19 evidentiary hearing may be continued, thus possibly creating a situation where more transfers became a
20 possibility if the hearing was rescheduled for a later date.

21 The Court held a status conference on January 2, 2024, to address the issues raised in Docs. 79
22 and 88, and determined that the evidentiary hearing would proceed on January 3, 2024, as scheduled.
23 The evidentiary hearing commenced on January 3, 2024. R.F. testified on January 5, 2024. The
24 evidentiary hearing concluded on January 9, 2024.

25 On February 5, 2024, Plaintiffs’ counsel sent an email requesting information about why
26 Plaintiffs’ witness, R.F., was placed in SHU. (Exhibit B at 4.) On February 8, 2024, after consultation
27 with FCI Dublin and the undersigned, agency counsel responded to Plaintiffs’ request for information
28 about R.F. (Exhibit B at 2-3.) This response notified Plaintiffs’ counsel, “R.F. has been temporarily

1 transferred to the Metropolitan Detention Center in Los Angeles until she is designated to another
2 facility commensurate with her security needs.” (Exhibit B at 2.) Plaintiffs made no objections to the
3 transfer. (Exhibit B at 1.)

4 **II. RESPONSE**

5 Civil contempt is appropriate only when a party fails to comply with a court order that is both
6 specific and definite. *Gifford v. Heckler*, 741 F.2d 263, 265 (9th Cir.1984). Thus, to support a contempt
7 motion, the order alleged to have been disobeyed must be sufficiently specific. International
8 Longshoremen’s Association, Local 1291 v. Philadelphia Marine Trade Association, 389 U.S. 64, 76
9 (1967). Failure to comply consists of not taking “all the reasonable steps within [one’s] power to insure
10 compliance with the order [].” *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir.1976), cert.
11 denied, 430 U.S. 931 (1977). The proof for civil contempt must be clear and convincing—a higher
12 standard than the preponderance of the evidence standard but less stringent than beyond a reasonable
13 doubt. *United States v. Powers*, 629 F.2d 619, 626 n. 6 (9th Cir.1980) (dictum). Substantial compliance
14 with a court order is a defense to an action for civil contempt. *Donallco*, 787 F.2d at 1379.

15 Counsel for the United States interpreted the December 30 order (doc. 88) as applying solely to
16 pre-hearing inmate transfers. The order responded to Plaintiffs’ administrative motion (doc. 79) and
17 Plaintiffs’ concerns that prospective inmate witnesses may be transferred in the lead up to the
18 evidentiary hearing. Accordingly, the United States interpreted the Order (doc. 88, order 4) to be limited
19 to halting pre-hearing transfers that could interfere with Plaintiffs’ ability to present their case. (*See Doc.*
20 88 at 4.) Counsel for the United States communicated transparently with Plaintiffs’ counsel regarding
21 R.F.’s temporary transfer from FCI Dublin based on safety concerns. (Exhibit B.) Plaintiffs’ counsel
22 responded five days later and did not express concerns with R.F.’s temporary transfer, nor did they
23 reference this Court’s order (doc. 88).

24 It is now clear that BOP misinterpreted this Court’s prior order (doc. 88) as being time limited to
25 pre-evidentiary hearing. But, as explained in Interim Warden Arthur Dulgov’s declaration, the decision
26 to temporarily transfer R.F. post-evidentiary hearing was cleared through multiple layers of internal
27 BOP review as well as BOP legal counsel and the U.S. Attorney’s Office. (Exhibit C.) The transfer was
28 not done furtively or in retaliation for R.F.’s testimony. It was clearly communicated to Plaintiffs’

1 counsel and was done for legitimate safety and security concerns. This Court does not have before it the
2 kind of clear and convincing evidence necessary to hold BOP in civil contempt. To the contrary, counsel
3 for the United States did not believe the transfer violated any Court orders.

4 The undersigned regret their misinterpretation of the December 30, 2023 Order, but it was not
5 contempt, and counsel respectfully requests the Court terminate Doc. 155.

6 Respectfully submitted on this 16th day of February, 2024.

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United States Attorney

9
10 */s/ Madison L. Mattioli*
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